

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

December 19, 1994

MEMORANDUM

SUBJECT: Universal Treatment Standards Authorization Implications

FROM: Michael Shapiro, Director  
Office of Solid Waste

TO: Waste Management Division Directions  
Regions I-X

The purpose of this memorandum is to clarify State implementation of the Universal Treatment Standards (UTS) promulgated as part of the Phase II Land Disposal Restrictions (LDR) rule (September 19, 1994, 59 FR 47980).

As described in the Phase II LDR final rule, UTS will simplify the LDR program by establishing one set of concentration based treatment standards for each hazardous constituent, regardless of the restricted waste the constituent is a component of. This is in contrast to the previous system where treatment levels for a particular constituent could vary between different restricted wastes. EPA believes that the simplification provided by the UTS will greatly assist compliance with and enforcement of the LDR program.

The UTS are promulgated pursuant to HSWA authority, and traditionally more stringent HSWA standards are immediately effective in authorized States. In most cases, the UTS limits are the same as the previous treatment standards, while about forty percent of the standards either went up or down. In reviewing the treatment standards, we concluded that a numerical comparison exaggerates the degree of change. In particular, the differences in numerical values for many of the organic constituents actually reflect adjustments in the limits of analytical detection. Thus, actual treatment will likely continue to destroy or remove organic to nondetectable levels. Even in those cases where the numerical limits have actually changed, the technology basis has not. Therefore, the changes to the treatment standards should not be viewed as more or less stringent.

As a result, EPA has decided not to implement the UTS separately for those wastes for which the state has received LDR authorization. Under this approach, the States authorized for some or all of the LDRs will continue to implement those portions of the program for which they are authorized, whether or not they have adopted the new standards, and, in EPA's view, the regulated industry will be subject to the state standards, regardless of whether they differ from

the new UTS. EPA strongly urges states to implement the new UTS standards as quickly as possible, both for simplicity of implementation and national consistency. But, state law (as interpreted by the state) would determine which standards applied. This approach would avoid the dual regulatory problem which would occur during the time before new HSWA requirements are adopted and authorized in the State.

EPA proposed a similar approach to state adoption of HSWA rules in the Subpart S rule (55 FR 30860), and did not receive any negative comments. EPA believes that Congress did not intend for the authorized State program's authority to return, in part, to EPA every time EPA promulgated modifications to HSWA program requirements. At the same time, however, this memo is not relinquishing EPA's statutory responsibility to implement significant new HSWA rules in States as soon as the rules become effective. Thus, this new approach will be reserved only for areas of the hazardous waste program already authorized and regulated by the state, not new areas of HSWA regulations. For example, the September 19, 1994 Phase II rule established treatment standards for several newly listed wastes; these new requirements are immediately effective in all the States and will be enforced by EPA.

The authorization approach discussed in this memo will be available only when changes to the treatment standard occur to existing HSWA programs in States authorized for those programs. As we develop rules in the future, we will address issues of applicability of the new approach in the preamble.

EPA has a strong interest in uniformity and consistency of regulations and believes that the improvements in the UTS meet these objectives. Thus, please encourage the States in your Region to adopt and apply for authorization of the Phase II rule. States that are currently authorized for portions of the LDRs may submit an abbreviated authorization revision application to the Region for the UTS. This application should consist of a letter from the State to the appropriate Regional office, certifying that it has adopted treatment standards equivalent to the UTS for those restricted wastes which are a part of the State's authorized LDR program. The State should also submit a copy of its final rule or other authorizing authority. A revised Program Description, Memorandum or Agreement and Attorney General's statement is not necessary because the only change the State would be making is to the treatment standards it is already authorized for. We expect the Regions will be able to act quickly on this authorization submittal because the changes are minor, thus simplifying the review.

If you have any questions or wish to discuss this memorandum in further detail please contact Virginia Phillips at (703) 308-8761.

